

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSTY LEISURE,

Defendant.

8:02CR260

**MEMORANDUM
AND ORDER**

This matter is before the Court on the correspondence from Defendant Rusty Leisure (“Leisure”) docketed as a motion to reduce sentence (Filing No. 156). Leisure asserts that the “charge used against [him] for 851 purpose [sic] was not the correct charge I was convicted of.” Leisure explains that in 1996, he was convicted of attempted sexual assault of a child, but Bureau of Prison and court records show he was convicted of sexual assault of a child. Leisure presumably argues that if the correct charge had been used, he would have received a shorter sentence.

Although the Court has attempted to construe Leisure’s pro se filing liberally, it is not possible to discern his theory of eligibility for any relief. First, because the issues he raises are neither constitutional nor jurisdictional, they must have been raised on direct appeal. *See Anderson v. United States*, 25 F.3d 704, 706 (8th Cir. 1994). To the extent he intends his motion to be a petition under 28 U.S.C. § 2255, he has not demonstrated compliance with 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A) regarding certification by a panel of the appropriate court of appeals for the filing of a successive motion.

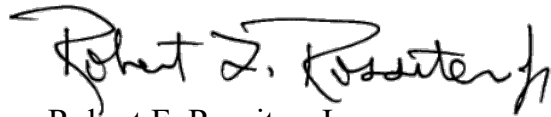
Even ignoring these deficiencies, Leisure’s assertions have no support in the record. The government’s notice under § 851 references a conviction for unlawful possession with intent to deliver cocaine, not sexual assault of a child. (*See* Filing No. 19). Moreover, to the extent Leisure asserts he was improperly designated a career offender, the Revised

Presentence Investigation Report specified that he was convicted of *attempted* sexual assault of a child. (*See* Filing No. 59 at 6). Leisure does not identify any other possible basis for relief. Accordingly, his motion must be denied.

IT IS SO ORDERED.

Dated this 26th day of January 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge